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16 UNITED STATES DISTRICT COURT
 17 FOR THE DISTRICT OF MASSACHUSETTS

18
 19 REV. PATRICK J. MAHONEY, CHRISTIAN) Case No.:
 20 DEFENSE COALITION, OPERATION) COMPLAINT FOR INJUNCTIVE AND
 21 RESCUE BOSTON and OPERATION) DECLARATORY RELIEF AND DAMAGES
 22 RESCUE WEST, BRANDI SWINDELL,) [First and Fourteenth Amendments to the
 23 GENERATION LIFE, and SURVIVORS OF) United States Constitution, 42 USC Section
 24 THE ABORTION HOLOCAUST,) 1983]
 25 Plaintiffs,) DEMAND FOR JURY TRIAL
 26 vs.)
 27 TOM RIDGE, Secretary of the Department of)
 28 Homeland Security, in His Official Capacity,)
 29 W. RALPH BASHAM, Director of the United)
 30 States Secret Service, in His Official Capacity,)
 31 JOHN DOE AGENT, Field Agent in Charge)
 32 of the Boston Office for the United States)
 33 Secret Service, in His Official Capacity, JOHN)
 34 DOE AGENTS 1 to 20, in Their Official)
 35 Capacity as Special Agents for the United)
 36 States Secret Service.)
 37 Defendants.)

38 **COMPLAINT**

39 **ISSUES BEFORE THE COURT**

1. IS IT CONSTITUTIONAL TO LEAVE OPEN GENERALLY A SIDEWALK TO OTHER USES WHILE CLOSING THAT SAME SIDEWALK TO FIRST AMENDMENT ACTIVITY?

2. CAN NATIONAL SECURITY CONCERNs SUMMARILY SUSPEND FIRST AMENDMENT RIGHTS?

NATURE OF THE CASE

1. This is a civil action pursuant to 42 U.S.C. Section 1983 to vindicate the plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution. The plaintiffs, an ordained Presbyterian Minister, Christian Defense Coalition, an unincorporated religious association, and Operation Rescue Boston, Operation Rescue West, an unincorporated Pro-Life Association, Brandi Swindell, a Bible believing Christian activist, Generation Life, an incorporated Pro-Life Association, and Survivors of the Abortion Holocaust, an unincorporated Pro-Life Association, seek injunctive and declaratory relief, as well as damages, wherein the defendants, their agents, servants, employees, and attorneys, and those acting in active concert with them be denied the authority to leave the sidewalks open generally to other uses while closing the sidewalks to First Amendment Activities for the week of July 26 through August 1, 2004 during the Democratic National Convention.

Plaintiff's Mahoney and Operation Rescue Boston had been granted permits to exercise their First Amendment activities on Louisburg Square and Pinckney Street, the two streets that adjoin Senator John Kerry's home located in Boston, Massachusetts. Senator John Kerry, a senator from Massachusetts, is the presumptive Democratic candidate for President in 2004. Plaintiff's Mahoney and Operation Rescue Boston's permit was summarily cancelled on or about July 23, 2004 by the City of Boston allegedly for reasons of national security. The defendants have ordered the closure of Louisburg Square and Pinckney Street and are forbidding First Amendment activities in this noted area. The defendants have no firm plan to exclude other activities in the closed area such as access to the media, the casual pedestrian, the dog-walker, residents in the closure area, and other vehicular traffic. These noted areas are not being closed

1 pursuant to exigent or emergency circumstances nor for reason of an emerging crisis, but only
 2 for reasons promulgated under the umbrella of "national security".

3 The question the Court must consider is whether the defendants intend to hold hostage or
 4 prisoner the residents that live in the closed off area and whether or not the defendants intend to
 5 forbid these noted residents from leaving their homes, putting out the trash, going for a casual
 6 walk, walking their dogs, and/or any other number of reasons that may bring these residents out
 7 of their homes during the time Louisburg Square and Pinckney Street are closed to First
 8 Amendment activity. The plaintiffs' contend that to allow residents that live within the closed
 9 area to use the sidewalks while at the same time precluding the plaintiffs' from exercising their
 10 First Amendment rights on these same sidewalks is unconstitutional.

11 The plaintiffs', pursuant to their previously granted permit from the City of Boston
 12 wherein the plaintiffs were granted access to Louisburg Square and Pinckney Street, offered to
 13 send but just one or two women into this noted area, and further consented unnecessarily but
 14 voluntarily to a body search, and a search of their possessions, of the one or two persons that
 15 would participate in the First Amendment activity. The intended First Amendment activity of
 16 the plaintiffs' encompassed the laying of a bouquet of roses at the corner of the home (at the
 17 corner of Louisburg Square and Pinckney Street) of the presumptive Democratic Presidential
 18 candidate John Kerry (symbolic of the aborted children whose lives have been shamefully taken
 19 through and by means of abortion) then offering a prayer for these children (the intended
 20 message to Senator John Kerry that this nation needs to protect the unborn) and thereafter
 21 leaving the area. The defendants declined the offer of the plaintiffs. The offer of the plaintiffs'
 22 to voluntarily consent and subject themselves to a search of their person and their possessions is
 23 all the security that the defendants need to assure the safety of Senator Kerry especially in light
 24 of the fact that Senator Kerry will not be at home during the plaintiffs' planned First Amendment
 25 activity in front of the Senator's home.

26 Regardless of whether or not the plaintiffs have a permit to exercise First Amendment
 27 activity on a public sidewalk and during the week of the Democratic National Convention, the
 28

1 permitting scheme relevant to First Amendment activity utilized by the City of Boston reads in
 2 pertinent part:

3 From July 10, 2004 through August 1, 2004 the permitting scheme shall be modified as
 4 follows:

5 “(a) Individuals and groups not exceeding twenty (20) people shall not be required to
 6 obtain any permits to exercise free speech and/or conduct lawful First Amendment
 7 activity. Said demonstrations shall be stationary in nature and shall not include the need
 8 for amplification, structures, and/or other equipment. Any individual or group acting
 9 under this provision shall abide by all regulations, ordinances, statutes and any and all
 10 other laws, including lawful orders of law enforcement officials. Any individual and/or
 11 groups in this category shall ensure safe passage (ingress-egress) for all pedestrian traffic
 12 on any and all sidewalks and other areas that they may be utilizing. Furthermore, any
 13 individual or group of twenty or fewer people without a permit under this provision shall
 14 remain clear of and off all roadways, streets, avenues and any and all other arterials
 15 utilized by vehicular traffic. If an individual or group wishes to use any roadway, street,
 16 avenue or any and all other arterials utilized by vehicular traffic that individual and/or
 17 group shall comply with steps one through three noted herein.”

18 The plaintiffs challenge whether or not it is lawful to leave a sidewalk open generally to
 19 other uses while closing sidewalks down to First Amendment activities. By manner of the
 20 defendants conduct and action complained of herein, the First Amendment rights of the
 21 plaintiffs' have been and will continue to be violated and abridged thereby causing irreparable
 22 harm and injury to these plaintiffs' and other similarly situated. Finally, plaintiffs contend that
 23 whether or not they have a permit or no permit, sidewalks are considered traditional public fora,
 24 and as such, the plaintiffs have constitutional rights that allow them to be on Louisburg Square
 25 and Pinckney Street for purposes of First Amendment activities.

26 The plaintiffs further hereby challenge National Security versus First Amendment rights,
 27 even in light of September 11, 2001 and the terrorist attacks that took place that day. Plaintiffs'
 28 contend that National Security cannot suspend First Amendment rights; there must be a

1 balancing between these two issues. If National Security is allowed to suspend First Amendment
 2 rights, the future of demonstrations in this nation relevant to all issues, regardless of whether
 3 conservative or liberal, shall fall victim to the very goal the terrorists attempted to accomplish on
 4 that fateful day on September 11, 2001.

5 First Amendment rights are precious and God given; our founding fathers foresaw the
 6 future and put into place protections and safeguards that allowed for and perpetuated robust and
 7 solicitous debates concerning the issues facing this country. The defendants cannot be allowed
 8 to summarily suspend these plaintiffs' constitutional rights without articulating the nature of the
 9 threat and being made to prove that the threat is a real one. It is much too easy to state that one
 10 cannot exercise his or her First Amendment rights because of National Security concerns;
 11 however, the real question must be at what cost and at what loss of constitutional rights? These
 12 plaintiffs' choose not to live their lives in fear; but rather instead hold steadfast to the belief that
 13 absent their First Amendment rights and the ability to speak out on issues regardless of what that
 14 issue might be, their freedoms that have been foretold and secured through the sacrifice of
 15 American blood and American lives will have been for naught.

16 2. An actual controversy exists between these two parties involving substantial
 17 constitutional issues. Defendants are responsible for the control and adherence to orders to close
 18 down Louisburg Square and Pinckney Street. The defendants' closure of this area, traditionally
 19 considered as public fora, subjects these plaintiffs' to indiscriminate and arbitrary decisions by
 20 public officials, and in the process, violates the First and Fourteenth Amendment rights of the
 21 plaintiffs.

JURISDICTION AND VENUE

22 3. This action arises under the First and Fourteenth Amendments to the United
 23 States Constitution and 42 U.S.C. Section 1983. Jurisdiction is invoked pursuant to 28 U.S.C.
 24 Sections 1331 and 1343.

25 4. Because these plaintiffs submitted applications for permits to conduct First
 26 Amendment activity on Louisburg Square and Pinckney Street during the week of the
 27 Democratic National Convention and subsequently obtained said permits from the City of
 28

1 Boston, and based upon the defendants closing Louisburg Square and Pinckney Street to the
 2 plaintiffs and furthermore, pursuant to the bulk of the defendants residing within this Court's
 3 district, and finally, because the subject matter is located within the City of Boston, venue is
 4 proper in the United States District Court for the District of Massachusetts pursuant to 28 U.S.C.
 5 Section 1391.

6 **PARTIES**

7 5. Plaintiff Reverend Patrick J. Mahoney is a resident of the State of Virginia, and an
 8 individual that chooses to exercise his First Amendment rights throughout this nation. Plaintiff
 9 Mahoney is an ordained Presbyterian Minister and holds firm the belief that Jesus Christ is Lord
 10 and Savior. Plaintiff Mahoney firmly believes that he has been commissioned by the Lord Jesus
 11 Christ to spread the good news of the gospel, and to speak out against the abortion industry.
 12 Plaintiff Mahoney submitted an application(s) to receive several permits (and received those
 13 permits and specifically a permit for Louisburg Square and Pinckney Street) allowing him to
 14 exercise his First Amendment rights during the week of July 24 through August 1, 2004 in
 15 Boston at the Democratic National Convention.

16 6. Plaintiff Christian Defense Coalition is an unincorporated religious association
 17 domiciled primarily in Washington, DC. This plaintiff holds firm the same beliefs of plaintiff
 18 Mahoney, as to the members of the Christian Defense Coalition, that Jesus Christ is Lord and
 19 that they are under a commission to tell the good news of Jesus Christ. This commission
 20 includes speaking out at national events in the exercise of their First Amendment and
 21 constitutional rights. Plaintiff Christian Defense Coalition intends to sponsor several rallies in
 22 Boston during the week of July 24 through August 1, 2004 at the Democratic National
 23 Convention. Therefore, this plaintiff falls subject to the "closure" of the defendants in
 24 attempting to engage in their constitutional activities at Louisburg Square and Pinckney Street.

25 7. Plaintiff Operation Rescue Boston is an unincorporated Pro-Life association that
 26 holds firm the belief that human life is sacred and that abortion is the killing of children.
 27 Operation Rescue Boston intends to exercise their First Amendment rights during the week of
 28 July 24 through August 1, 2004 and most specifically at Louisburg Square and Pinckney Street

1 during the Democratic National Convention. Operation Rescue Boston is domiciled in Braintree,
 2 Massachusetts.

3 8. Plaintiff Operation Rescue West is an unincorporated Pro-Life association that
 4 holds firm the belief that human life is sacred and that abortion is the killing of children.
 5 Operation Rescue West intends to exercise their First Amendment rights during the week of July
 6 24 through August 1, 2004 and most specifically at Louisburg Square and Pinckney Street during
 7 the Democratic National Convention. Operation Rescue West is domiciled in Wichita, Kansas.

8 9. Plaintiff Brandi Swindell is a Christian activist and holds firm the belief that
 9 human life is sacred and that abortion is the killing of children. Brandi Swindell intends to
 10 exercise her First Amendment rights during the week of July 24 through August 1, 2004 and
 11 most specifically at Louisburg Square and Pinckney Street during the Democratic National
 12 Convention.

13 10. Plaintiff Generation Life is an incorporated Pro-Life association that holds firm
 14 the belief that human life is sacred and that abortion is the killing of children. Generation Life
 15 intends to exercise their First Amendment rights during the week of July 24 through August 1,
 16 2004 and most specifically at Louisburg Square and Pinckney Street during the Democratic
 17 National Convention. Generation Life is domiciled in Boise, Idaho.

18 11. Plaintiff Survivors of the Abortion Holocaust is an unincorporated Pro-Life
 19 association that holds firm the belief that human life is sacred and that abortion is the killing of
 20 children. Survivors of the Abortion Holocaust intend to exercise their First Amendment rights
 21 during the week of July 24 through August 1, 2004 and most specifically at Louisburg Square
 22 and Pinckney Street during the Democratic National Convention. Survivors of the Abortion
 23 Holocaust are domiciled in California.

24 12. Defendant Tom Ridge is the Secretary of the Department of Homeland Security;
 25 the first Secretary of this Department appointed January 24, 2003, and is sued in his official
 26 capacity only. The United States Secret Service is a bureau of the Department of Homeland
 27 Security. Defendant Tom Ridge has control and authority over the defendants in this action and
 28 has control over the decision to close Louisburg Square and Pinckney Street.

13. Defendant W. Ralph Basham is the 21st Director of the United States Secret Service first sworn in on January 27, 2003, and is sued in his official capacity only. Defendant W. Ralph Basham has control and authority over the defendants in this action and has control over the decision to close Louisburg Square and Pinckney Street.

14. Defendant John Doe Agent, whose true name is unknown to the plaintiffs' at this time, however, the plaintiffs' will file leave to amend when the true and correct name is ascertained, is the field agent in charge of the Boston Office of the United States Secret Service and is sued in his or her official capacity only. Defendant John Doe Agent has control and authority over the defendants in this action and has control over the decision to close Louisburg Square and Pinckney Street.

15. Defendant John Doe Agents 1 to 20, whose true names are unknown to the plaintiffs' at this time, are the field agents in charge of enforcing the order for closure of Louisburg Square and Pinckney Street and are sued in their official capacity only. Defendants' John Doe Agents 1 to 20 have control and authority to enforce the closure of Louisburg Square and Pinckney Street. The true names and capacities of John Doe Agents, whether individual or otherwise, are unknown to the plaintiffs at this time, who therefore sue these defendants by such fictitious names. When the true names and capacities of these defendants are ascertained, plaintiffs will amend this complaint to insert same. At all times mentioned in this complaint, each of these defendants, including the fictitiously named defendants, was the agent and/or employee of each of the remaining defendants and, in doing the alleged acts herein, was acting in the scope of such agency and/or employment.

16. While the City of Boston and/or the Boston Police Department are not named as parties to this action, the purpose of not naming them herein is predicated on the belief that the closure complained of herein is directly related to and under the control, direction, and authority of the defendants. It is further believed that the City of Boston cancelled the permit noted above pursuant to the orders of the defendants, and but for those orders, the plaintiffs would be able to exercise their First Amendment rights pursuant to the previously issued permit(s).

STATEMENT OF FACTS

1 17. The defendants have made the indiscriminate decision and issued orders to close
 2 down Louisburg Square and Pinckney Street thereby depriving the plaintiffs' of their First
 3 Amendment rights to conduct constitutional activities in this area while leaving the area
 4 otherwise open to general use during the week of July 26 through August 1, 2004, the same week
 5 the Democratic National Convention is being held in the City of Boston.

6 18. Plaintiff's Mahoney and Operation Rescue Boston had been granted permits to
 7 exercise their First Amendment rights on Louisburg Square and Pinckney Street, the two streets
 8 that adjoin Senator John Kerry's home located in Boston, Massachusetts. Senator John Kerry, a
 9 senator from Massachusetts, is the presumptive Democratic candidate for President in 2004.

10 19. Plaintiff's Mahoney and Operation Rescue Boston's permit was summarily
 11 cancelled on or about July 23, 2004 by the City of Boston allegedly for reasons of national
 12 security and at the direction and orders of the defendants named herein.

13 20. The defendants have indiscriminately ordered the closure of Louisburg Square
 14 and Pinckney Street and are forbidding First Amendment activities in this noted area. The
 15 defendants have no firm plan, however, to exclude other activities in the closed area such as
 16 access to the media, the casual pedestrian, the dog-walker, residents in the closure area, and other
 17 vehicular traffic. The question the Court must consider is whether the defendants intend to hold
 18 hostage or prisoner the residents that live in the closed off area and whether or not the defendants
 19 intend to forbid these noted residents from leaving their homes, putting out the trash, going for a
 20 casual walk, talking with neighbors about the ongoing political process, talking to their
 21 neighbors about Senator John Kerry, walking their dogs, and/or any other number of reasons that
 22 may bring these residents out of their homes during the time Louisburg Square and Pinckney
 23 Street are closed to First Amendment activity. The plaintiffs' contend that to allow residents that
 24 live within the closed area to use the sidewalks while at the same time precluding the plaintiffs'
 25 from exercising their First Amendment rights on these same sidewalks is unconstitutional.

26 21. By allowing the residents that live within the perimeter of Louisburg Square and
 27 Pinckney Street (that area that is closed to the plaintiffs) to engage in speech as articulated
 28 above, and by precluding the plaintiffs' from doing so in the same area, the defendants have

1 effectively engendered viewpoint and content based discrimination against these plaintiffs and
2 others so similarly situated.

3 22. Additionally, whether or not it is the defendants' intent to close Louisburg Square
4 and Pinckney Street to all traffic, pedestrian and/or otherwise, the defendants cannot justify the
5 closure under the blanket of national security for reasons articulated herein below.

6 23. Plaintiffs hereby challenge National Security versus First Amendment rights, even
7 in light of September 11, 2001 and the terrorist attacks that took place that day. Plaintiffs'
8 contend that National Security cannot suspend First Amendment rights; there must be a
9 balancing between these two issues. If National Security is allowed to suspend First Amendment
10 rights, the future of demonstrations in this nation relevant to all issues, regardless of whether
11 conservative or liberal, shall fall victim to the very goal the terrorists attempted to accomplish on
12 that fateful day on September 11, 2001. First Amendment rights are precious and God given; our
13 founding fathers foresaw the future and put into place protections and safeguards that allowed for
14 and perpetuated robust and solicitous debates concerning the issues facing this country. The
15 defendants cannot be allowed to summarily suspend these plaintiffs' constitutional rights without
16 articulating the nature of the threat and being made to prove that the threat is a real one. It is
17 much too easy to state that one cannot exercise his or her First Amendment rights because of
18 National Security concerns; however, the real question must be at what cost and at what loss of
19 constitutional rights? These plaintiffs' choose not to live their lives in fear; but rather instead
20 hold steadfast to the belief that absent their First Amendment rights and the ability to speak out
21 on issues regardless of what that issue might be, their freedoms that have been foretold and
22 secured through the sacrifice of American blood and American lives will have been for naught.

23 24. The defendants are not closing Louisburg Square and Pinckney Street pursuant to
24 exigent or emergency circumstances, nor for reason of an emerging crisis, but only for reasons
25 promulgated under the blanket of "national security". The defendants, however, fail to articulate
26 what national security means or what concerns are relevant under the conditions germane to this
27 at-issue closure. While it is true that Senator Kerry is the presumptive Democratic Presidential
28 candidate for 2004, the plaintiffs' contend that the Senator's absence from his home during the

1 planned constitutional activity previously scheduled for Louisburg Square and Pinckney Street
 2 alleviates the threat to "national security".

3 25. The plaintiffs' offered to send but just one or two women into this noted area, and
 4 further consented unnecessarily but voluntarily to a body search of their person and to the
 5 possessions of the one or two persons that would participate in the First Amendment activity in
 6 order to alleviate security concerns.

7 26. The intended First Amendment activity of the plaintiffs' encompassed the laying
 8 of a bouquet of roses at the corner of the home (at the corner of Louisburg Square and Pinckney
 9 Street) of the presumptive Democratic Presidential candidate John Kerry (the roses being
 10 symbolic of the aborted children whose lives have been shamefully taken through and by means
 11 of abortion) then offering a prayer for these children (the intended message to Senator John
 12 Kerry that this nation needs to protect the unborn) and thereafter leaving the area. This
 13 constitutional message/speech would have encompassed but a brief period of time, not to exceed
 14 even twenty minutes.

15 27. The defendants declined the offer of the plaintiffs and, in an earlier meeting on
 16 July 23, 2004 between plaintiff Mahoney and one of the John Doe Agents, the John Doe Agent
 17 refused and declined to elaborate on the full implementation of the defendants' plans to close the
 18 at-issue area.

19 28. The offer of the plaintiffs' to voluntarily consent and subject themselves to a
 20 search of their person, and a search of their possessions (bouquet of roses) that they intended to
 21 carry into the closed off area is all the security that the defendants needed to assure the safety of
 22 Senator Kerry especially in light of the fact that Senator Kerry will not be at home during the
 23 plaintiffs' planned First Amendment activity in front of the Senator's home. Senator Kerry is
 24 presently on a national tour and is expected to arrive in Boston sometime around Wednesday,
 25 July 28, 2004.

26 29. Regardless of whether or not the plaintiffs have a permit to exercise First
 27 Amendment activity on a public sidewalk and during the week of the Democratic National
 28

1 Convention, the permitting scheme relevant to First Amendment activity utilized by the City of
2 Boston reads in pertinent part:

3 From July 10, 2004 through August 1, 2004 the permitting scheme shall be modified as
4 follows:

5 " (a) Individuals and groups not exceeding twenty (20) people shall not be required to
6 obtain any permits to exercise free speech and/or conduct lawful First Amendment
7 activity. Said demonstrations shall be stationary in nature and shall not include the need
8 for amplification, structures, and/or other equipment. Any individual or group acting
9 under this provision shall abide by all regulations, ordinances, statutes and any and all
10 other laws, including lawful orders of law enforcement officials. Any individual and/or
11 groups in this category shall ensure safe passage (ingress-egress) for all pedestrian traffic
12 on any and all sidewalks and other areas that they may be utilizing. Furthermore, any
13 individual or group of twenty or fewer people without a permit under this provision shall
14 remain clear of and off all roadways, streets, avenues and any and all other arterials
15 utilized by vehicular traffic. If an individual or group wishes to use any roadway, street,
16 avenue or any and all other arterials utilized by vehicular traffic that individual and/or
17 group shall comply with steps one through three noted herein."

18 30. The plaintiffs challenge whether or not it is lawful to leave a sidewalk open
19 generally to other uses while closing sidewalks down to First Amendment activities. By manner
20 of the defendants conduct and action complained of herein, the First Amendment rights of the
21 plaintiffs' have been and will continue to be violated and abridged thereby causing irreparable
22 harm and injury to these plaintiffs' and others similarly situated. Furthermore, groups of twenty
23 or fewer people are not required by the City of Boston to have a permit to engage in First
24 Amendment activity.

25 31. The plaintiffs' offer to the defendants' of just one or two individuals entering the
26 closed off area to conduct the First Amendment activity described herein clearly fits into the City
27 of Boston's provision for acting without a permit.

32. Finally, plaintiffs contend that whether or not they have a permit or no permit, sidewalks are considered traditional public fora, and as such, the plaintiffs have constitutional rights that allow them to be on Louisburg Square and Pinckney Street for purposes of First Amendment activities.

33. The closure order of the defendants' amount to an impermissible prior restraint on the First Amendment rights of these complaining plaintiffs.

34. As a result of the defendant's conduct, plaintiffs' have suffered, are suffering, and will continue to suffer severe, irreparable injuries and violations of their fundamental federal and state constitutional and statutory rights by virtue of the policy and practices set forth herein. Moreover, the acts of the defendants chill and deter and will continue to chill and deter plaintiff's exercise of their constitutional rights.

35. Unless restrained by this Court, defendants will continue in their unbridled discretion to enforce the closure of Louisburg Square and Pinckney Street promulgated by the defendants in an impermissible manner and in violation of the plaintiffs First Amendment rights.

36. Plaintiffs have no plain, adequate, or complete remedy at law to address these violations of their constitutional rights, and injunctive and declaratory relief are plaintiff's only means of securing complete and adequate relief. No other remedy would offer plaintiffs substantial and complete protection from continuation of defendant's unlawful and unconstitutional acts, policies, and practices.

37. The continued irreparable injury of plaintiffs' fundamental rights is both great and immediate, as defendants' interpretation and application relevant to the closure of Louisburg Square and Pinckney Street flagrantly violate and impede plaintiffs' federal and state constitutional and statutory rights. The future chilling of these rights is an absolute certainty unless and until this Court grants the relief requested herein. Each day plaintiffs' rights are abridged, they have lost what they cannot regain. Under these circumstances, remedies at law are entirely inadequate.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

1 **Claim for Violation of Plaintiffs Constitutional Rights to Freedom of Speech**
2 **as guaranteed by the First Amendment**

3 38. The plaintiffs hereby incorporate by reference paragraphs 1 through 37 of this
4 complaint as though fully set forth herein.

5 39. Defendants have ordered the closure of Louisburg Square and Pinckney Street
6 and pursuant thereto, have forbidden the plaintiffs from exercising their First Amendment rights
7 on sidewalks traditionally considered and held out to be public fora. This closure is succinct to
8 the week of July 26 through August 1, 2004 during the time of the Democratic National
9 Convention. The defendants have provided no justifiable reason for the closure of traditional
10 public fora, and for the violation of these plaintiffs' First Amendment rights, but for the given
11 reason of national security. The defendants are not closing Louisburg Square and Pinckney
12 Street pursuant to exigent or emergency circumstances, nor for reason of an emerging crisis, but
13 only for reasons promulgated under the blanket of "national security". The defendants, however,
14 fail to articulate what national security means or what concerns are relevant under the conditions
15 germane to this at-issue closure.

16 40. No compelling government interest exists which justifies defendants'
17 discrimination against plaintiffs.

18 41. Defendants conduct by closing Louisburg Square and Pinckney Street to the
19 plaintiffs', while leaving this same area open to the residents that live within the perimeter of the
20 closure area and allowing these residents to engage in free speech, amounts to viewpoint and
21 content based discrimination against the plaintiffs' and is therefore unconstitutional.

22 42. Defendants discrimination against protected speech is not a narrowly tailored
23 means enacted to serve a compelling government interest.

24 43. Defendants have imposed an unlawful system of prior restraint in violation of the
25 rights to freedom of speech which are clearly established under the United States Constitution.
26

44. The defendants' order to close Louisburg Square and Pinckney Street is unconstitutional due to overbreadth because it unnecessarily sweeps protected speech within its application.

45. The defendants' prohibition is unconstitutional as applied because it discriminates against protected First Amendment speech in a designated open forum.

WHEREFORE, PLAINTIFFS respectfully pray that the Court grant the relief set forth hereinafter in the Prayer for Relief.

SECOND CAUSE OF ACTION

Claim for Violation of Plaintiffs' Constitutional Rights to Due Process of Law as Guaranteed by the Fourteenth Amendment to the United States Constitution

46. The plaintiffs hereby incorporate by reference paragraphs 1 through 45 of this complaint as though fully set forth herein.

47. The prohibition of protected speech by defendants impacts speech without any clear or precise standards subject to objective measurement or application, but instead are given meaning only through the exercise of unbridled discretion by those responsible for the enforcement of the “closure” complained of herein.

48. The “closure” is unconstitutional because it allows the defendants to indefinitely deny access to traditional public fora to these complaining plaintiffs without justification during the week of July 24 through August 1, 2004, thereby depriving the plaintiffs of their constitutional rights to free speech.

WHEREFORE, PLAINTIFFS respectfully pray that the Court grant the relief set forth hereinafter in the Prayer for Relief.

THIRD CAUSE OF ACTION

Claim for Violation of Plaintiffs' Constitutional Rights to

Freedom of Association and Assembly

49. The plaintiffs hereby incorporate by reference paragraphs 1 through 48 of this complaint as though fully set forth herein.

50. The “closure” by the defendants is unconstitutional as applied in that it does not bear a rational relationship to the purpose that the “closure” is intended to accomplish. The stated purpose of the closure is for reasons of national security; however, the defendants have not precluded all others, except for those exercising their First Amendment rights, from the closed area complained of herein. Nor have the defendants articulated justifiable reasons for the complained of “closure”

51. The plaintiffs intend to peacefully assemble and exercise their constitutional right to association during the Democratic National Convention. The “closure” by the defendants prevents the plaintiffs from doing so on and/or around Louisburg Square and Pinckney Street until and unless the plaintiffs fall within the category of acceptable individuals that will be allowed into the “closure”.

52. The plaintiffs intend to exercise the protected constitutional activity of free speech, freedom of association and freedom of assembly in Boston during the Democratic National Convention.

53. The defendants “closure” interfere with the plaintiffs’ rights to assemble and associate in Boston during the Democratic National Convention in the public square and other traditional public fora; therefore, the “closure” of the defendants should be declared unconstitutional. Defendants should be enjoined from enforcing, effecting, or otherwise implementing the “closure” complained of herein.

1 WHEREFORE, PLAINTIFFS respectfully pray that the Court grant the relief set forth
 2 hereinafter in the Prayer for Relief.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, the plaintiffs pray this Honorable Court grant the following judgment in
 5 plaintiff's favor and the following relief:

6 1. Declaratory relief that the defendants' conduct of implementation and
 7 enforcement of the closure of Louisburg Square and Pinckney Street involving the First
 8 Amendment rights of these complaining plaintiffs would and does violate the plaintiffs rights
 9 under the First and Fourteenth Amendments;

10 2. Enter a permanent injunction requiring the defendants, their agents,
 11 employees, and all persons acting in concert with defendants to refrain from implementing
 12 and/or enforcing the closure of Louisburg Square and Pinckney Street;

13 3. In the event that defendants implement and enforce the closure of
 14 Louisburg Square and Pinckney Street against these plaintiffs before this matter can be heard by
 15 the Court, that this Court issue an order requiring the defendants to refrain from implementation
 16 and/or enforcement of the "closure" and thereafter a permanent injunction would issue against
 17 defendants, their agents, employees and all acting in concert with them and preclude them from
 18 further enforcement of the "closure" and cease and desist thereof;

19 4. That defendants be denied the authority to leave the sidewalks open
 20 generally to other uses while closing the sidewalks to First Amendment Activities for the week
 21 of July 26 through August 1, 2004 during the Democratic National Convention pending this case
 22 being heard by this Court; and furthermore, deny the defendants the power to close Louisburg
 23 Square and Pinckney Street to First Amendment activity for reasons articulated within this

1 complaint based upon viewpoint and content based discrimination by the defendants and against
2 the plaintiffs until this matter can be heard on its merits;

3 5. Enter a preliminary and permanent injunctive relief to prevent the
4 defendants, their officers, agents, employees, successors, attorneys, and all persons acting in
5 concert with them to be restrained and enjoined from interfering in any manner with plaintiffs
6 fundamental rights of free speech, due process of law and freedom of assembly and association;

7 6. That the Court judge, decree, declare, and render a Declaratory Judgment
8 that the prohibition of plaintiffs' speech and the newly enacted "closure" is unconstitutional as
9 applied to suppress plaintiffs' First Amendment rights in violation of the First and Fourteenth
10 Amendments to the United States Constitution;

11 7. That this Court retain jurisdiction of this matter for the purposes of
12 enforcing the Court order;

13 8. That the Court exercise its discretion pursuant to Rule 65 of the Federal
14 Rules of Civil Procedure to accelerate the trial on the merits;

15 9. That this Court issue the requested injunctive relief without a condition of
16 bond or surety or other security being required of plaintiffs;

17 10. That this Court order a trial by jury to access actual and compensatory
18 damages suffered by these plaintiffs due to defendants flagrant violation of plaintiffs
19 constitutional rights;

20 11. Award the plaintiffs reasonable costs and attorneys' fees pursuant to
21 U.S.C. Section 1988; and

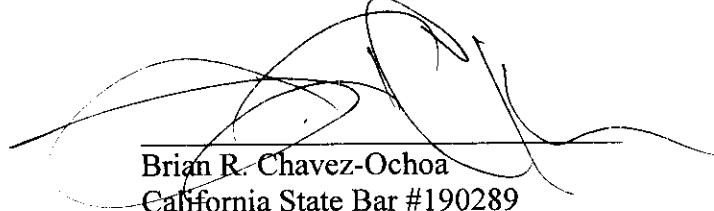
22 12. Grant the plaintiffs such other relief as the Court deems necessary and
23 proper.

1 **THE PLAINTIFFS HEREBY DEMAND A JURY TRIAL**

2 Dated: July 23, 2004.

3 Respectfully submitted,

4 CHAVEZ-OCHOA LAW OFFICES

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